

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH C. SISNEROS,	)	Civil No. 14cv891 GPC(RBB)
	)	
Plaintiff,	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>MOTION TO COMPEL DISCOVERY</b>
v.	)	<b>[ECF NO. 24]</b>
	)	
SERGEANT BROWN, et al.,	)	
	)	
Defendants.	)	
	)	

Plaintiff Joseph Sisneros, a state prisoner incarcerated at Richard J. Donovan Correctional Facility in San Diego, California, proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. He alleges that Defendant correctional and mental health officials acted with deliberate indifference to his safety in violation of the Eighth Amendment when they placed him in a cell with another inmate, Jesus Gomez, who viciously attacked Plaintiff. (Compl. 3, ECF No. 1.)

Currently pending before the Court is Defendants Brown and Mendez's pre-answer motion for summary judgment for failure to exhaust administrative remedies pursuant to Federal Rule of Civil Procedure 56 and Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014) (en

1 banc) [ECF No. 9]. Defendants Mendez and Brown argue that  
2 Plaintiff failed to timely exhaust his administrative remedies  
3 against them and seek summary judgment on that basis. (Defs. Brown  
4 & Mendez's Mot. Summ. J. Attach. #1 Mem. P. & A. 6, ECF No. 9.)  
5 Also pending before the Court is Defendants Davis and Krittman's  
6 motion to dismiss [ECF No. 10]. Plaintiff has opposed both motions  
7 [ECF Nos. 14, 18, 20, 22], and Defendants filed a combined reply  
8 [ECF No. 16]. Plaintiff's Motion to Compel Discovery was filed  
9 nunc pro tunc to March 30, 2015 [ECF No. 24].

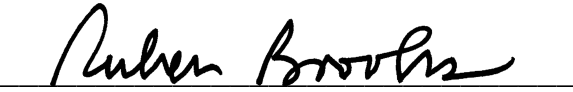
10 As the Ninth Circuit recently instructed in Albino, any  
11 disputed issues regarding administrative exhaustion "should be  
12 decided, if feasible, before reaching the merits of a prisoner's  
13 claim." 747 F.3d at 1170. "If discovery is appropriate, the  
14 district court may in its discretion limit discovery to evidence  
15 concerning exhaustion, leaving until later--if it becomes  
16 necessary--discovery directed to the merits of the suit." Id.  
17 (citing Pavey v. Conley, 544 F.3d 739, 742 (7th Cir. 2008).

18 In his Motion to Compel, Sisneros seeks information about his  
19 alleged attacker's illness and medical history, such as a list of  
20 medications Gomez had taken for the past six years, and other  
21 discovery "for the sole purpose of proving [his] case." (Pl.'s  
22 Mot. Compel 1, ECF No. 24.) Plaintiff's request is unrelated to  
23 the issue of administrative exhaustion. His motion to compel  
24 merits discovery is premature; Defendants' substantive motions are  
25 pending and no answer has been filed. If Defendants' motions are  
26 denied and they are directed to answer the Complaint, discovery  
27 will proceed in accordance with the Federal Rules of Civil  
28

1 Procedure. Accordingly, Plaintiff's Motion to Compel Discovery  
2 [ECF No. 24] is DENIED at this time.

3 **IT IS SO ORDERED.**

4 Dated: April 8, 2015

  
Ruben B. Brooks  
United States Magistrate Judge

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6 cc: Judge Curiel  
7 All Parties of Record  
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